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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/522,612	07/14/2005	Yukio Kakita	IS-US020389	6667
22919 7590 05/23/2007 GLOBAL IP COUNSELORS, LLP 1233 20TH STREET, NW, SUITE 700 WASHINGTON, DC 20036-2680			EXAMINER DESAI, HEMANT	
			ART UNIT 3721	PAPER NUMBER
			MAIL DATE 05/23/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

SP

Office Action Summary	Application No. 10/522,612	Applicant(s) KAKITA ET AL.	
	Examiner Hemant M. Desai	Art Unit 3721	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 April 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 and 8-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>2/15/2007, 4/28/05 HD</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 1-6, 8-19 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. In claims 1 and 12, applicant claims that the "apparatus/system is configured to adjust the thickness of the sealed package based upon the difference between the temperature of the outside air and the temperature of the gas, and the amount of the gas", and in claim 19, "an adjustment.....package" (lines 10-12). The sealed package expands (therefore the thickness of package is changed) after sealing because the gas is raised in temperature due to difference between inside and outside temperatures and expanded, which is a natural phenomenon. Therefore, how the apparatus or system is configured to adjust the thickness of the sealed package? Once the temperature and amount of inert gas is set, after sealing, the gas will expand depending on the difference between the temperature of inert gas and the ambient temperature. Therefore, one skilled in the art could not configure the apparatus/system to **adjust** the thickness of the sealed package. Based upon the same arguments set forth above, regarding claim 11,

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one skilled in the art could not perform the step of adjusting the thickness of the sealed package.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-2, 8, 10-12 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Japanese Patent (JP 4-072160).

Japanese Patent ('160) discloses a packaging apparatus and method for manufacturing a package wherein an article to be packaged and an inert gas are sealed in a packaging material, comprising an introducing units through which the article (4, fig. 2) to be packaged and the gas are supplied to the packaging material formed in a tubular shape (see fig. 2), and a first sealing mechanism (14, fig. 2) that seals the tubular packaging material to manufacture a package containing the article and the gas, the gas having a temperature lower than that of the outside air when the first sealing mechanism seals the tubular package material, which meets all the claimed limitations. Regarding changing the thickness of package, it is being achieved by expanding the gas due to temperature difference, which is natural phenomenon, and therefore it is inherent in the apparatus and method of Japanese patent.

Japanese Patent discloses that the temperature of the inert gas is 5° C lower than the ambient temperature and, after sealing, the gas is raise in temperature due to

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difference between inside and outside temperatures and expanded to change the thickness of the package. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide a control unit to adjust (change) the temperature and amount of gas, since it has been held that the provision of adjustability, where needed, involve only routine skill in the art. *In re Stevense*, 101 USPQ 248 (CCPA 1954).

Regarding claim 10, Japanese Patent discloses that a transporting unit that transports the tubular packaging material downward, and a second sealing unit (13, fig. 2) that seals a longitudinal edge of the tubular packaging material, the longitudinal edge being parallel to the transport direction of the transported flexible packaging material, the direction in which the first sealing mechanism (14) seals the tubular packaging material is perpendicular to the transport direction.

Regarding claim 11 and 12, Japanese Patent, as mentioned above, discloses all the claimed limitations of claims 11 and 12.

5. Claims 3-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Japanese Patent (JP 4-072160) in view of Paltrinieri (5546733).

Japanese Patent ('160), as mentioned above, discloses all the claimed limitations, except for changing the gas temperature by sensing the various parts of the filling machine. However, Paltrinieri teaches a device (15-17, fig. 2) to control the feeder device (12, fig. 2). Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the temperature control device as

taught by Paltrinieri in the apparatus and method of Japanese Patent ('160) to control the gas temperature modifying unit.

6. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Japanese Patent (JP 4-072160) in view of Tsuruta (6729108).

Japanese Patent ('160), as mentioned above, discloses all the claimed limitations, except for a pair of smoothing parts. However, Tsuruta teaches a pair of smoothing parts (50, figs. 6 and 8) for preventing wrinkles and sags in the area heat sealed by the sealing mechanism (see col. 9, lines 60-65). Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the pair of smoothing parts as taught by Tsuruta in the apparatus and method of Japanese Patent ('160) to prevent wrinkles and sags in the area heat sealed by the sealing mechanism.

7. Claims 13-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Japanese Patent (JP 4-072160) in view of Nolfi, Jr. (6843037).

Japanese Patent ('160), as mentioned above, discloses all the claimed limitations, except for post-processing on the manufactured package by elevating the temperature. However, Nolfi, Jr. teaches to post-processing package by elevating temperature (see figs. 1 and 4) to assure sterility of the packaged product (see col. 8, lines 64-67). Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the post-processing on the manufactured package by elevating the temperature as taught by Nolfi, Jr. in the apparatus and method of Japanese Patent ('160) to assure sterility of the packaged product.

Response to Arguments

2. Applicant's arguments with respect to claims 1-6, 8-19 has been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hemant M. Desai whose telephone number is (571) 272-4458. The examiner can normally be reached on 6:30 AM-5:00 PM, Mon-Thurs..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi I. Rada can be reached on (571) 272-4467. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

hd


HEMANT M. DESAI
PRIMARY EXAMINER